

# Advocacy Policy

## PURPOSE OF COMMERCIAL ADVOCACY

The goal of U.S. Government (USG) commercial advocacy is to help level the playing field on behalf of U.S. businesses and workers competing for international contracts against foreign firms and to promote the growth of exports of U.S. goods and services around the world.

## BACKGROUND

When exporters of U.S. goods and services (or “U.S. exporters”) seek to compete in foreign government procurements, the USG can provide support through commercial advocacy. These Advocacy Guidelines set forth how the Advocacy Center determines whether it will approve commercial advocacy for a particular transaction.

On March 11, 2010, the President issued Executive Order 13534, *National Export Initiative* (NEI), setting forth the Administration’s goal of doubling exports over the next five years. Among the items that the NEI addresses is “steps to ensure that the Federal Government’s commercial advocacy effectively promotes exports by U.S. companies.” The NEI Executive Order provides that this work is to be carried out by members of the Export Promotion Cabinet in coordination with the Advocacy Center.

On December 6, 2012, the President issued Executive Order 13630, *Establishment of an Interagency Task Force on Commercial Advocacy*. That Executive Order created an Interagency Task Force on Commercial Advocacy (Task Force), which is chaired by the Secretary of Commerce. The Executive Order defines “commercial advocacy” as Federal support for U.S. firms competing for foreign project or procurement opportunities, and defines “foreign project or procurement opportunities” as export opportunities, including defense export opportunities, for U.S. businesses that involve foreign government decision makers, including foreign government-owned corporations. Among other functions, the Task Force reviews and prioritizes advocacy cases for which the Advocacy Center has approved the provision of commercial advocacy and coordinates the activities of relevant agencies to enhance Federal support for such cases.

These guidelines explain how the Advocacy Center determines, on a case-by-case basis, whether to approve the provision of commercial advocacy.

## GUIDELINES

### A. National Interest Determination

The Advocacy Center approves the provision of commercial advocacy for a bid or proposal if it determines that commercial advocacy is in the U.S. national interest. The Advocacy Center makes this determination in consultation with other Department of

Commerce units, the Department of State, and, when appropriate for the specific foreign project or procurement opportunity, other agencies that are represented on the Task Force or have relevant knowledge or expertise.

National interest determinations are made on a case-by-case basis, and the Advocacy Center may approve commercial advocacy on behalf of a U.S. exporter for one bid or proposal and deny commercial advocacy on behalf of the same U.S. exporter for a different bid or proposal. The Advocacy Center may at any time re-evaluate a national interest determination based on new information.

## **B. U.S. Export Content**

In making its national interest determination, the Advocacy Center first considers the value of the U.S. goods and services that would be exported pursuant to the bid or proposal for the foreign project or procurement opportunity. Commercial advocacy is presumed to be in the U.S. national interest if the bid or proposal would meet the 50 percent U.S. content threshold. This threshold is met if goods and services produced in the United States make up at least 50 percent of the value of the bid or proposal. For example, a widget manufacturer may seek to win a contract to provide U.S.-made widgets to a foreign government Ministry. The widgets are assembled in the United States from mostly U.S.-made components, such that the sales value of the widgets comprises 70 percent U.S. content, while the remaining 30 percent of content is made up of components or services sourced from other countries. Such a bid or proposal would meet the 50 percent threshold.

The Advocacy Center may approve commercial advocacy for a bid or proposal that does not meet this threshold if it determines that such commercial advocacy is nonetheless in the U.S. national interest. Conversely, the Advocacy Center may determine that commercial advocacy for a bid or proposal is not in the U.S. national interest even if the bid or proposal meets the 50 percent U.S. content threshold.

In making its national interest determination, the Advocacy Center will consider, in addition to the 50 percent U.S. content threshold, the following factors:

1. Whether the bid or proposal includes a significant dollar value of exports of U.S. goods or services (despite falling below the 50 percent U.S. content threshold);
2. Whether the foreign project or procurement opportunity provides a substantial probability of future exports of U.S. goods or services by the applicant and/or other exporters;
3. Whether the foreign project or procurement opportunity provides a substantial benefit to the U.S. industrial base or technological capabilities in the industry or industries concerned, for example by helping to ensure that the United States maintains the capacity to produce a key product or service;

4. Whether the potential for U.S. export content for the foreign project or procurement opportunity is limited, for example by reason of restrictions or conditions imposed by the terms of the project or procurement opportunity, or because of the economic unfeasibility of sourcing particular goods or services from the United States; and
5. Whether the foreign project or procurement opportunity provides export opportunities for small and medium-sized enterprises that might not otherwise be available.

### **C. Foreign Competition**

As one of the purposes of commercial advocacy is to help level the playing field on behalf of U.S. businesses and workers competing for international contracts, the Advocacy Center will approve commercial advocacy only if there is or is likely to be foreign competition for the foreign project or procurement opportunity. Examples of such foreign competition include:

1. A public tender for a foreign project or procurement opportunity in which the applicant and exporters from other countries are competing;
2. Strong evidence that such a public tender is forthcoming and that commercial advocacy is necessary to ensure that specifications do not preclude the applicant from participating; or
3. Indication from the foreign government that it is interested in acquiring specific products or services from foreign suppliers.

Commercial advocacy may be appropriate prior to the release of a public tender for foreign projects or procurement opportunities that have a long lead time, such as those for civil nuclear services, facilities, and equipment, in order to establish foreign government awareness of USG support for companies potentially interested in competing for such a tender.

### **D. Foreign Government Decision-Makers**

Consistent with the Executive Order 13630, commercial advocacy is provided for export opportunities “that involve foreign government decision-makers, including foreign government-owned corporations.” Thus, for the Advocacy Center to determine that commercial advocacy is in the national interest, there must be a foreign government presence in the decision-making process, which could be a government agency or official or another entity that is owned or controlled by the government or that is exercising delegated governmental authority. Such decision-makers include, but are not limited to:

1. Government ministries and their officials;
2. State-owned or state-controlled enterprises;
3. Government-controlled agencies, cooperatives, or commissions;

4. Private entities for which the government has the ability or authority to influence a final decision on a project or procurement opportunity or approve or veto such a decision; and
5. Private entities whose governing board includes a government official who is acting in an official governmental capacity.

### **E. Multiple U.S. Applicants**

There are often foreign project or procurement opportunities in which more than one U.S. exporter is interested in participating, whether as a bidder of record, sub-contractor, or as a supplier to a foreign bidder of record. If the Advocacy Center determines that commercial advocacy is in the national interest for more than one applicant, the USG will, as a general rule, provide national advocacy, meaning that the USG will either advocate for the selection of a “U.S. solution” without naming the specific U.S. exporters, or advocate for the U.S. exporters by name without preference.

If the Advocacy Center approves commercial advocacy for a U.S. exporter and subsequently learns that another U.S. exporter is also interested in the foreign project or procurement opportunity, the Advocacy Center will encourage the other U.S. exporter to apply for commercial advocacy. If the other U.S. exporter declines to do so, commercial advocacy will be provided for the U.S. exporter that was approved for commercial advocacy without regard to the other U.S. exporter’s interest in the foreign project or procurement opportunity.

If two U.S. exporters submit applications to the Advocacy Center for the same foreign project or procurement, the Advocacy Center may in some situations approve commercial advocacy for only one applicant. This may occur when:

1. One applicant’s bid or proposal includes significantly higher U.S. export content than other applicants’ bids or proposals;
2. One applicant’s bid or proposal is determined not to be in the national interest;
3. Other circumstances relating to the U.S. national interest determination (listed above) weigh heavily in favor of one applicant’s bid or proposal; or
4. The Advocacy Center determines that an applicant has submitted an application primarily to neutralize the impact of commercial advocacy for another applicant.

### **F. Foreign Ownership**

If the government of the country of nationality of the applicant, or of the ownership of the applicant, limits or prohibits U.S. exports of the good or service that is the subject of the bid or proposal, the Advocacy Center may consider this fact in determining whether commercial advocacy is in the U.S. national interest. For example, if a U.S. exporter that is majority owned by nationals of country A applies for commercial advocacy for a bid or proposal to sell widgets to country B, and country A limits or prohibits the import of widgets from the United States, the Advocacy Center might determine that commercial advocacy on behalf of the applicant U.S. exporter is not in the national interest.

## **G. Anti-Bribery**

A key USG policy goal is to eliminate bribery in international business transactions. An applicant (and, as appropriate, the bidder of record or non-U.S. partner) seeking commercial advocacy must agree that it and its affiliates: (a) have not and will not engage in the bribery of foreign public officials in connection with the matter for which advocacy assistance is being sought; and (b) maintain and enforce a policy that prohibits the bribery of foreign public officials. Additional information concerning this agreement, including definitions of “affiliate” and “bribery of foreign public official,” is included in the Agreement Concerning Bribery and Corporate Policy Prohibiting Bribery that must be submitted with an application for commercial advocacy.

## **H. Other U.S. Policy Goals**

To be determined to be in the national interest, commercial advocacy must not be detrimental to achieving USG policy goals unrelated to the economic benefit of the transaction, including foreign policy goals, trade and investment policy goals, national security goals, and international environmental and humanitarian goals.

## **I. Procedures**

### **1. Applicant Responsibilities**

An applicant may apply for commercial advocacy by submission of an Advocacy Questionnaire to the Advocacy Center. The Questionnaire is found at [http://export.gov/advocacy/eg\\_main\\_022745.asp](http://export.gov/advocacy/eg_main_022745.asp).

Applicants for advocacy should apply for advocacy in a timely manner, allowing sufficient time for the Advocacy Center to conduct its review in coordination with other agencies. This is particularly important for foreign project or procurement opportunities involving the export of defense articles and services subject to the International Traffic in Arms Regulations, as the commercial advocacy review process for these items may take considerably longer than for other applications as it involves unique steps.

Applicants must inform the Advocacy Center of developments with respect to the foreign project or procurement opportunity, including the conclusion of the competition or the applicant’s withdrawal from the competition, and must respond promptly to requests for additional information from the Advocacy Center.

### **2. Due Diligence**

The Advocacy Center undertakes a due diligence review of each application, including with respect to the applicant, other persons or entities participating in the project, including the bidder of record (if other than the applicant), and the foreign project or procurement opportunity itself, to determine whether there are issues of concern which

might lead the Advocacy Center to conclude that commercial advocacy is or is not in the U.S. national interest. In conducting this review, the Advocacy Center staff will consider information provided by the applicant, public information, and information obtained from other units within Commerce and from other agencies.

### **3. Roles of the Advocacy Center and Task Force**

The Advocacy Center determines whether the provision of commercial advocacy is in the U.S. national interest in the manner described above. The Advocacy Center reviews and prioritizes advocacy cases and coordinates commercial advocacy across the government.

The Task Force works to ensure that mechanisms exist for coordinated advocacy efforts across the government and helps to coordinate the engagement of agency leadership with foreign counterparts regarding commercial advocacy. The Task Force may also designate cases for particular attention by the Advocacy Center.

On behalf of the Task Force, the Director of the Advocacy Center will coordinate commercial advocacy efforts for each project or procurement opportunity in order to increase the success of applicants competing for foreign procurements and to increase the number of senior-level officials regularly and effectively advocating on behalf of U.S. exports. Such coordination has the goal of ensuring that the correct foreign government official is chosen to receive commercial advocacy, that engagements are undertaken at the appropriate time, and that such engagements are fully coordinated among agencies. The nature of each project or procurement opportunity is different and different opportunities may require differing approaches.

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